

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 7334 of 1996****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

=====

- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

=====

VIDYARAM GASES - Petitioner(s)**Versus****GUJARAT ELECTRICITY BOARD & 1 - Respondent(s)**

=====

Appearance :

MR BM MANGUKIYA for Petitioner(s) : 1,
MR RC JANI for Respondent(s) : 1 - 2.

=====

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 08/02/2006****ORAL JUDGMENT**

1.By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction or order directing the respondent - Gujarat Electricity Board not to withhold the electricity supply at the

premises purchased by it situated at Survey No. 50, village Vagusana, District Bharuch, on the ground that there are arrears of the erstwhile owner of the said property.

2. It is the case of the petitioner that the petitioner has purchased the property owned by one M/s. Monachest Electronics Private Ltd., in a public auction held by the Gujarat State Financial Corporation Ltd., held under Section 29 of the State Financial Corporations Act; 1951. It is the case of the petitioner that initially the sister concerned of the petitioner was highest bidder, however, as they wanted to purchase the property in the name of the petitioner - firm, a proposal was forwarded to the Corporation and the Corporation accepted the said proposal and that is how the property came to be purchased in the name of the petitioner - firm. It is also the case of the petitioner that thereafter the petitioner submitted an application to the respondent - GEB for reconnecting the electricity supply, which was

installed at the premises purchased by the petitioner, and the petitioner came to be informed by the Officers of the respondent - GEB that unless the petitioner clears the dues of the erstwhile owner of the unit, no such power supply can be restored at the said premises and therefore, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India.

3. It is the contention on behalf of the petitioner that the petitioner has purchased the property in the public auction held by the Corporation in exercise of powers conferred upon it under Section 29 of the Act and the petitioner has purchased the property and no any liability of the erstwhile unit has been accepted by the petitioner and the property purchased by the petitioner is free from all encumbrances and therefore, it is submitted that the insistence on the part of the respondent - GEB to clear the dues of the erstwhile owner, by the petitioner, is absolutely illegal. In the

petition, the petitioner has relied upon the judgment of the Hon'ble Supreme Court in case of ***Isha Marbles V/s. Bihar State Electricity Board & Ors.*** reported in **1995 (2) SCC Page-648.**

4.The Written Submissions have been submitted on behalf of the petitioner wherein, the learned advocate appearing on behalf of the petitioner has tried to make out new case and new grounds as it was pointed out in the affidavit-in-reply that in fact, the petitioner has accepted the liability of the Electricity Board/Electricity Company, if any, and it is also submitted in the Written Submissions that so far as GEB is concerned, there is no contract between the petitioner and the GEB and therefore, the GEB cannot insist that the dues of the erstwhile owner be cleared by the petitioner. In the Written Submissions it is also submitted that new Electricity Act has been brought in force wherein, Section 43 of the Act provides for statutory liability of the licence to supply the power on demand and on failure the licensee is

liable to pay the penalty, which may extend to Rs. 1000/- for each day of default, and therefore, non-supplying the powers on demand by the petitioner will be offence under Section 43 of the Act and therefore, it is requested to allow the present Special Civil Application. At the outset it is required to be noted that there are no pleadings in the petition with regard to what is mentioned in the Written Submissions.

5. Shri R.C.Jani, learned advocate appearing on behalf of the respondent - GEB has heavily relied upon the terms of the agreement entered into between the petitioner and the GSFC while purchasing the property in question, more particularly, Clause - 13 whereby, the petitioner has accepted the liability of the Electricity Board/Electricity Company. It is also further submitted that because of Clause - 13 and on acceptance of the liability of the Electricity Board/Electricity Company by the purchaser, the petitioner's offer to purchase the property at Rs. 22,06,000/- must have been accepted

otherwise, the valuation of the property might have been much more. It is submitted that once the petitioner has accepted the liability, it is not open for the petitioner now to contend that the petitioner is not liable to make the payment. Shri Jani has relied upon the judgment of the learned Single Judge of this Court in case of ***Sun Chem V/s. G.E.B. Chairman & Ors.*** reported in **(2004) 6 GHJ Page-251** wherein, the petitioner has purchased the premises in auction with a condition accepting the liability of the Electricity Board/Electricity Company and it is held by this Court that the petitioner is liable to pay the dues of the electricity consumption remained unpaid by the predecessor-in-title. Shri Jani has also relied upon one unreported judgment of this Court rendered in Special Civil Application No. 8142 of 1999 wherein, similar view has been taken and the Special Civil Application filed by the petitioner, who was seeking reconnection of the electricity supply, has been rejected. Therefore, it is requested to dismiss the present Special Civil

Application.

6. Heard the learned advocates appearing on behalf of the parties.

7. It is not in dispute that the petitioner has purchased the property in a public auction held by the GSFC held under Section 29 of the State Financial Corporations Act; 1951 and the petitioner has entered into agreement. One of the condition of the agreement, more particularly, Clause - 13 reads as under :-

"Liabilities of Gujarat Electricity Board / Electricity Company, if any, shall be borne by the purchased."

Thus, the petitioner - purchaser has accepted the liability of the Electricity Board/Electricity Company and therefore, it is not open for the petitioner to contend that the petitioner is not liable to clear the electricity dues of the erstwhile owner having once accepted the liability.

It might be that because of the fact that the petitioner - purchaser accepted the liability of the Electricity Board/Electricity Company, an offer of the petitioner to purchase the property at Rs. 22,06,000/- might have been accepted, otherwise, the market value and/or the price of the property might have been much more and therefore, the contention on behalf of the petitioner that there is no contract between the petitioner and the GEB and therefore, the GEB cannot insist for the clearance of the dues of erstwhile owner by the petitioner, has no substance. The petitioner forgets that so far as the petitioner is concerned, the petitioner has accepted the liability of the Electricity Board/Electricity Company and therefore, the petitioner is liable to clear the electricity dues of the erstwhile owner and the petitioner cannot escape from the liability on the ground that there is no contract between the petitioner and the GEB. The controversy in question is, in fact, covered by the two decisions of the of this Court one in case of *Sun Chem (Supra)* and

another rendered in Special Civil Application No. 8142 of 1999. In both the above decisions, the purchaser had purchased the premises in auction and there were dues of electricity consumption, not paid by the predecessor-in-title and similar Clause - 13 was there, by which, the petitioner accepted the liabilities of the Electricity Board/Electricity Company. It was the contention on behalf of the petitioners that as they have purchased the premises in auction, it absolves the petitioners from the liability of making payment of dues towards electric consumption charges not paid by the predecessor-in-title. Considering the Auction Clause - 13, the judgment of the Hon'ble Supreme Court in case of ***Isha Marbles (Supra)*** will not be of any assistance to the petitioner as in the case before the Hon'ble Supreme Court, there was no such condition and the purchaser has not accepted the liability of the dues of the Electricity Company of the erstwhile owner.

8. So far as the contention on behalf of the

petitioner invoking Section 43 of the new Electricity Act is concerned, it is required to be noted that the present Special Civil Application is of the year 1996 and it is not appreciable how Section 43 of the new Electricity Act would be applicable. Even if it is applicable, the Electricity Company cannot be compelled to supply the power irrespective of clearance of any dues. Under the circumstances also, there is no substance in the said submission.

9. Considering the above facts and circumstances and for the reasons stated above as well as considering the two decisions of this Court referred to hereinabove, it cannot be said that the insistence on the part of the respondent - GEB to clear the electricity dues of the erstwhile owner by the petitioner is in any way illegal and/or arbitrary which calls for interference of this Court in exercise of the powers under Article 226 of the Constitution of India. Under the circumstances, the present Special Civil Application is required to be

dismissed and is accordingly dismissed.

10. Rule is discharged. Ad-interim relief, if any, granted earlier stands vacated forthwith. However, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.